

1 IN THE MATTER OF : BEFORE THE

2

3 THE APPEAL OF : PERSONNEL BOARD

4

5 VICTORIA L. WILLIAMS : OF HOWARD COUNTY

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8

VOLUME 5

9 REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

10 HEARING DATE: April 1, 1999

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14 BEFORE: Personnel Board of Howard County

15 BOARD MEMBERS: Jacqueline Brown, Chairperson

16 Thomas McKillip, Vice Chairperson

17 Russell Gledhill

18 Charles Greenslit

19 Chris McNamara

20

21

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3 None

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7 Worker's Comp. Comm 490

1 know that there was another relationship, Ms. Pereira  
2 admitted that that had been a prior relationship to  
3 the existence of the policy so that goes to prove  
4 nothing. If there's no policy against it, how is  
5 that grounds for termination.

6           The other pillar for the charges of  
7 dismissal and the dismissal itself is Ms. Williams  
8 testimony before this Board in the hearing that  
9 included Title 7 claims. And that brings me to the  
10 point of contrary to law.

11           First of all, on the grounds of inconsistent  
12 claims, one of Ms. Pereira's observations from that  
13 testimony was there were inconsistent claims and  
14 certainly there is more than one factor that's listed  
15 by Ms. Williams, sometimes in confused fashion, in  
16 her testimony. I will point out that Title 7 does  
17 not require that one of its grounds be the sole  
18 causation of a termination or other unfavorable  
19 employment action in order for that action to be  
20 sustainable. Price Waterhouse v. Hopkins at 490 US  
21 228, a decision of the Supreme Court of the United



1 States makes clear that there can be more than one  
2 cause for termination and as long as one of them is a  
3 violation of the civil rights laws, then a cause of  
4 action will (indiscernible).

5           Secondly, the claim was she misrepresented  
6 her relationship with Captain Dunst. Again, this  
7 testimony was prior to the incident that was in the  
8 video. It doesn't necessarily reflect testimony that  
9 would have come after the incident in the video. The  
10 testimony that I saw is inconclusive and confused to  
11 say the least, and it comes at the end of a very  
12 lengthy, namely 157 page, examination. I think  
13 that's another example of basing a decision on a very  
14 small part of the record.

15           Again, what the legislature of Maryland has  
16 provided is that Administrative action is to be  
17 reversed if it is, "unsupported by competent material  
18 and substantial evidence in light of the record as a  
19 whole." Six pages out of 157 is not a whole.  
20 McDonnell Douglas Corporation v. Green at 411 US 792,  
21 a 1973 decision of the Supreme Court of the United

1 States, sets out the framework for the order of proof  
2 in retaliation cases. It provides first that the  
3 employee has to show that she was engaged in a  
4 protected activity. In this case, that protected  
5 activity is the testimony before this Board in a  
6 Title 7 claim. 2., it has to show -- she has to show  
7 that the employer was aware of that activity. The  
8 employer was obviously aware of that activity. It  
9 cited that activity in the termination. 3., that the  
10 employee suffered an adverse action. Certainly  
11 termination after this many years of employment is  
12 adverse. And 4., that there's a causal connection  
13 between the protected activity and the adverse  
14 action. Now, most of the decisions really go  
15 because, go off on the fact that it's difficult for  
16 the employee to show that causal connection. Here  
17 there's no such problem. Ms. Pereira cites that  
18 causal connection. She says in the charges of  
19 dismissal and dismissal, I'm firing you because of  
20 what you said in your testimony before this Board on  
21 a prior occasion. And she's testified to that affect

1 tonight as well. In the Title 7 frame work, what  
2 happens when the Plaintiff shows those things is that  
3 the employer then has the burden of production to  
4 articulate a legitimate, non-retalitorial reason for  
5 the adverse action. And what that doesn't mean is  
6 that the previous action was unsuccessful. All of  
7 the Circuits as well as the Supreme Court agree, and  
8 the Supreme Court, not by its own decision in so many  
9 words, but by denying certiorari from all the  
10 Circuits and I'll use the language of the 2nd  
11 Circuit. "It is well settled that a finding of  
12 unlawful retaliation generally does not depend on the  
13 merits of the underlying discrimination complaint."  
14 In other words, the fact that Ms. Williams was wrong  
15 about her initial claim of discrimination does not  
16 mean that she can be fired for having made it.  
17 That's still retaliation. Instead the Plaintiff  
18 must, "demonstrate a good faith belief that the  
19 actions of the employer violated the law."

20           Now, the record of this Board in that  
21 decision is, presumably, available to this Board.



1 And I'll point out that there were seven witnesses  
2 who testified on behalf of Ms. Williams and seventeen  
3 exhibits that were introduced and the fact that that  
4 complaint was not upheld does not indicate that she  
5 didn't have good faith reason for believing in her  
6 own case. What we also have in this case that's  
7 highly unusual is the relationship between the  
8 complaint and the discharge. Because usually people  
9 are saying usually - two minutes? Our contention is  
10 --

11 BOARD: (Indiscernible) Mr. Basehoar.

12 MR. KNEPPER: Our contention is that it is  
13 per se unlawful to terminate an employee because of  
14 their testimony in an actual Agency hearing on a  
15 Title 7 case and I will simply cite the cases that I  
16 believe stand for that proposition and they are  
17 Wilson v. UT Health Center, that's University of  
18 Texas, at 973 F2 1263, 5th Circuit 1992, certiorari  
19 denied, 507 US 1002. And Vasconslos (phonetic) v.  
20 Meese (phonetic), 907 F2nd 111, 9 Circuit 1990. And  
21 they cite in that a 4th Circuit decision, Jabba v.

1 Fayetteville University. All of these are decisions  
2 in which the Plaintiff says you fired me because I  
3 wrote a nasty letter alleging discrimination or I  
4 complained to my boss or I did something like that.  
5 And in every case the United States Court of Appeals  
6 says that's not protected. It's a different thing if  
7 you had been giving testimony to an Agency that was  
8 authorized to investigate it. Then you couldn't be  
9 fired because of that testimony. But because you  
10 weren't fired because of the testimony or, at least,  
11 because you didn't prove that you did, we're not  
12 going to uphold your complaint.

13 In this instance, Ms. Pereira's charges of  
14 dismissal, the dismissal itself and her testimony all  
15 show she was fired because of her testimony before an  
16 Agency that is empowered to investigate and make  
17 findings based on Article 7 and that violates the  
18 law. Thank you.

19 BOARD: (Inaudible).

20 MR. BASEHOAR: Thank you, Mr.

21 (Indiscernible). I too would like to thank the Board